

REMARKS / ARGUMENTS

Claims 16 and 28-35 are pending in the present application. Of these claims, 16 and 28 are independent.

Claims 16 and 28-33 were rejected under doctrine of obviousness type double patenting over claims 1, 3-4 and 11 of U.S. Patent No. 6,629,953. Applicant shall address this objection upon allowance of a claim in the present application.

Claims 16, 28-30 and 33 were rejected as being anticipated by Kleshinski (U.S. Patent No. 6,245,012). Claims 31-32 were rejected as being unpatentable over Kleshinski in view of Fearnot (U.S. Patent No. 5,100,423). Claims 34-35 were rejected as being unpatentable over Kleshinski.

Discussion

Independent claims 16 and 38 are patentable over Kleshinski since Kleshinski does not disclose or suggest “a cage which is movable from a collapsed position to an expanded position, the cage having a plurality of openings in the expanded position, the openings being formed by rigidly connected elements, the cage having an inner surface, the cage being releasable so that the cage may be left within the patient” and “a material removing element positioned within the cage to remove the material extending into the openings, the material removing element being movable along the inner surface of the cage to remove the material extending into the openings.” In the Office Action it is asserted that the stent 14 meets the limitations of the claimed material removing element. Applicant submits that the stent 14 is not movable relative to the inner surface of another structure to remove material extending through openings in that structure. Kleshinski is directed to a passive filter and has no active cutting parts let alone the claimed material removing element which moves along the inner surface of the claimed cage.

Applicant submits that it would not have been obvious to use the stent 14 to remove material extending through an opening in another structure in Kleshinski since Kleshinski is concerned with providing a device which captures dislodged material rather than dislodging material with the stent 14 as asserted in the Office Action. Kleshinski states that "a primary object of the present invention to provide a novel and improved free standing filter for expansion within a blood vessel to capture dislodged embolic material" (rather than dislodging material) and that another object is to "provide a novel and improved free standing filter for use during a procedure to treat blood vessel stenosis or occlusion which does not cause trauma to the luminal wall during guidewire balloon and stent exchanges" (col. 2, line 66 to col. 3 line 3).


Dependent claims 29-30 and 33 are allowable since they depend from allowable independent claim 28 and because they recite independently patentable features.

CONCLUSION

Applicant submits that all claims are in condition for allowance and an action to that end is respectfully requested. If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-412-3322.

Respectfully submitted,

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